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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---------------------------|-------------|----------------------|---------------------|------------------|
| 09/516,753 | 03/01/2000 | Gregory Pinchasik | 2390/49701 | 3706 |
| 27123 | 7590 | 12/08/2005 | EXAMINER | |
| MORGAN & FINNEGAN, L.L.P. | | | BUI, VY Q | |
| 3 WORLD FINANCIAL CENTER | | | ART UNIT | |
| NEW YORK, NY 10281-2101 | | | PAPER NUMBER | |

3731

DATE MAILED: 12/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

1/2

| | | | |
|------------------------------|--------------------------------------|---|--|
| Office Action Summary | Application No. 09/516,753 | Applicant(s) PINCHASIK ET AL. | |
| | Examiner Vy Q. Bui | Art Unit 3731 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) 12-19, 51-66, 106 and 107 is/are withdrawn from consideration.
- 5) ☐ Claim(s) 95-100, 102, 104, 105, 118, 119 and 125 is/are allowed.
- 6) ☒ Claim(s) 1-6, 9-11, 20-25, 28-33, 35, 108-111, 113, 114, 116-117, 122 and 122 is/are rejected.
- 7) ☒ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>4/2005&8/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

Continuation of Disposition of Claims: Claims pending in the application are 1-6,9-25,28-33,35,51-66,95-100, 102,104-111,113,114,116-119,122 and 125.

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of the Species shown in Fig. 5 as elected in the reply filed on 6/11/2001 has been reconfirmed and is acknowledged. This application contains claims 12-19, 51-66, 106-107 drawn to an invention nonelected without traverse in Paper No. 6/11/2001. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

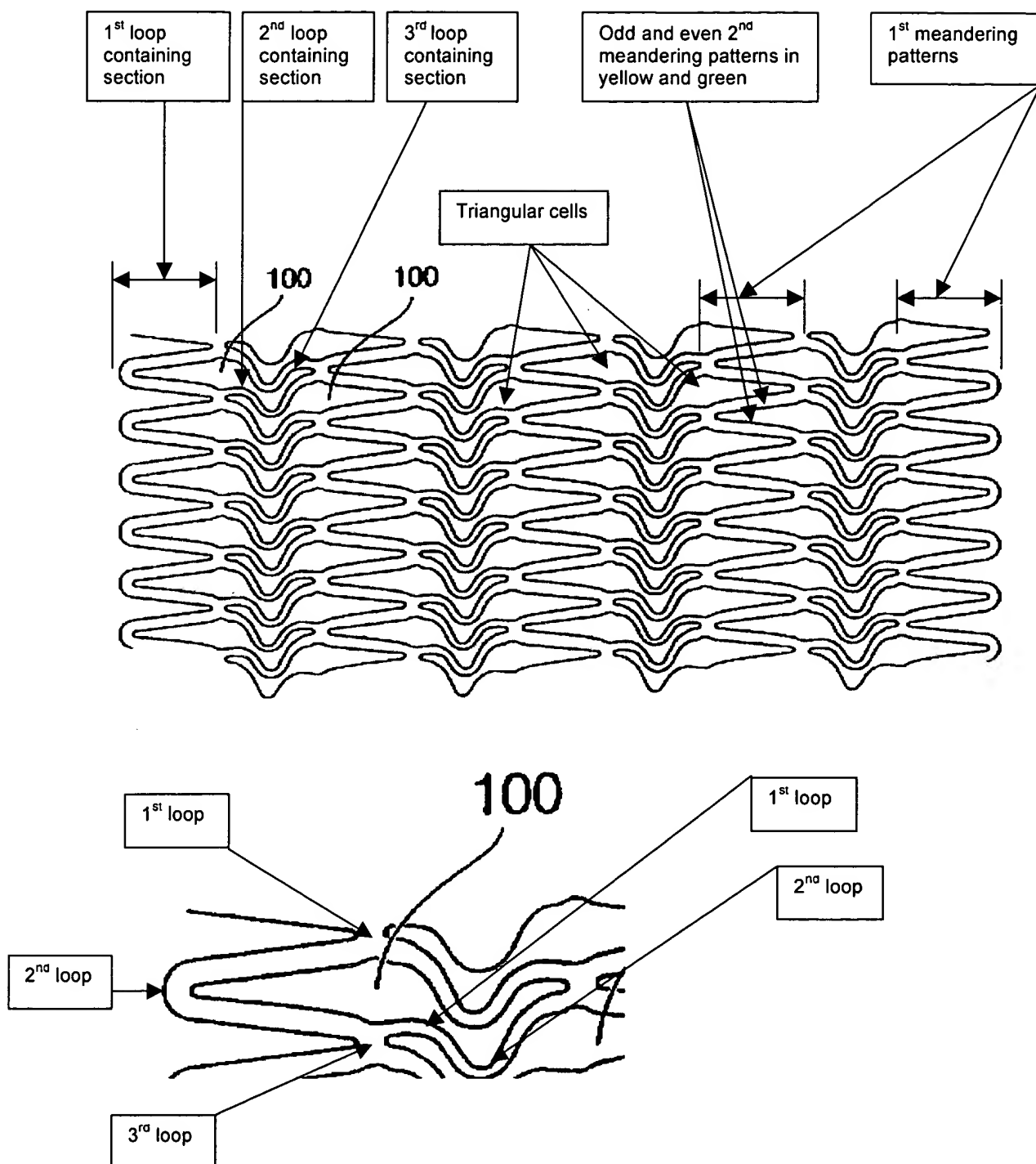
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 1-6, 9-11, 21, 23-25, 28-33, 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Von Oepen-WO 98/35634.

Von Oepen-'634 (Fig. 10 as presented on page 3) discloses substantially all limitations as recited in the claims.

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2. Claims 21-22, 108-109 and 122 are rejected under 35 U.S.C. 102(b) as being anticipated by Berry et al.-6,231,598.

Berry-'598 (Fig. 5, for example) discloses 1st meander patterns or 1st circumferential bands 14/69, 2nd meander patterns or 2nd circumferential bands 21/39, shorter and wider legs in the 1st meander patterns, and even 1st meander pattern and odd 1st meander pattern are out of phase 180 degrees. Notice that the claims do not specify the triangular cells with any specific detail to exclude some cells in Berry-'598.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Von Oepen-WO 98/35634.

Von Oepen-'634 discloses substantially all structural limitations of the stent except for plating the stent with a radiopaque material/protective material/medicine. It is well known in the art to coat a stent with a radiopaque material/protective material/medicine. For example, Berry-6,231,598 (col. 15, lines 63-64) discloses a parylene or polytetrafluoroethylen coating to cover the stent. In view of Berry-'598, it would have been obvious to one of ordinary skill in the art to provide Von Oepen-'634 stent with a protecting material/cover as recited in the claim.

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2. Claims 108-111, 113-114, 116 and 122 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown et al-6,776,793 in view of Von Oepen-WO 98/35634.

As to claims 108-111, 113-114, 116 and 122, Brown-'793 (Fig. 2, reproduced and shown on next page) discloses substantially all limitations as recited in the claims, except for the 1st loop containing section has wider legs than the 2nd and 3rd loop containing sections.

However, it is well known in the art to have a stent with bands having wider legs alternating with bands having narrow legs to provide flexibility for the stent. For example, Von Oepen (Fig. 10) above shows bands of 1st loop containing section having wider legs and bands of 2nd and 3rd loop containing sections having narrower legs to enhance flexibility of the stent. In view of Von Oepen, it would have been obvious to one of ordinary skill in the art at the time of the invention to make bands of 1st loop containing sections of Brown stent to have legs wider than legs of bands formed of 2nd and 3rd loop containing sections so that Brown stent would be more flexible to adapt itself to a blood vessel. Notice that Brown's Fig. 2 shows 1st circumferential bands having a basically sinusoidal pattern of loops at a 1st frequency and 2nd circumferential bands having a basically sinusoidal pattern of loops at a 2nd frequency higher than the 1st frequency as recited in the claims.

Allowable Subject Matter

Claims 95-100, 102, 104-105, 118-119 and 125 are allowed.

Response to Arguments

Applicant's arguments filed 8/15/2005 have been fully considered but they are not persuasive as indicated below.

1. Rejection over Von Oepen-WO 98/35634: please notice that because all struts/loops/legs of Von Oepen-'634 stent define a cylindrical body, therefore they are indeed parallel to or orient along the longitudinal axis of the stent. Further, Von Oepen-'634 shows in page of this "Office Action" shorter legs in one same loop containing section.

2. Rejection over Beery-US 6,231,598: please notice that because all struts/loops/legs of Von Oepen-'634 stent define a cylindrical body, therefore they are indeed parallel to or orient along the longitudinal axis of the stent. Further, Berry-'598 shows loops (curved portions) and legs (not curved portions), and shows longer and shorter legs in one same loop containing section (see Fig. 5, Beery-'589).

3. Rejection of claim 20 in view of Von Oepen and Officail Notice: please see rejection of claim 20 above.

4. Rejection of claims over Brown in view of Von Oepen: see allowable subsection matter above.

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Conclusion

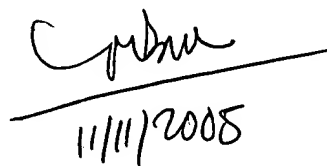
Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is 571-272-4692. The examiner can normally be reached on Monday-Tuesday and Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



11/11/2008

Vy Q. Bui
Primary Examiner
Art Unit 3731